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12/8/2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The North American Marketing Corporation

Serial No. 76450244

Peter L. Costas of Pepe & Hazard for The North American Marketing Corporation.

Stacy B. Wahlberg, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).

Before Hanak, Quinn and Holtzman, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

The North American Marketing Corporation (applicant) seeks to register in typed drawing form NEW ENGLAND FORGE for "wrought iron patio furniture, namely, chairs, tables, chaise lounges and plant stands." The intent-to-use application was filed on September 17, 2002.

Citing Section 2(e)(2) of the Trademark Act, the Examining Attorney has refused registration on the basis

that the mark NEW ENGLAND FORGE is primarily geographically descriptive of applicant's goods. When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

At the outset, we note that in order to establish that a mark is primarily geographically descriptive of applicant's goods, "it is necessary to show that the mark sought to be registered is the name of a place known generally to the public, and that the public would make a goods/place association, i.e. believe that the goods for which the mark is sought to be registered originate in that place." In re California Pizza Kitchen, 10 USPQ2d 1704, 1705 (TTAB 1988) citing In re Societe General, 824 F.2d 757, 3 USPQ2d 1450 (Fed. Cir. 1987).

In this case there can be no dispute that the geographical term "New England" is well known to the public. Indeed, at page 4 of its brief, applicant states that "New England is a familiar geographical location."

In addition, there is no dispute that applicant is located in Manchester, Connecticut, and that Connecticut is located within New England. Given that New England is a well-known geographic term and that applicant is located within New England, we can presume that the public would

make the requisite goods/place association. California Pizza Kitchen, 10 USPQ2d at 1706. See also In re Handler Fenton Westerns, Inc., 214 USPQ 848 (TTAB 1982). Moreover, the addition of the word FORGE to NEW ENGLAND does not cause the mark in its entirety to lose its significance as being primarily geographically descriptive. In re Chalk's International Airlines, 21 USPQ2d 1637 (TTAB 1991). The word "forge" is defined as follows: "A furnace for heating metal to be wrought" or "A place where metal is heated and wrought." Webster's New World Dictionary (1996). As applied to wrought iron patio furniture, the word "forge" merely indicates the place where the iron was manufactured. See also The American Heritage Dictionary of the English Language (3rd ed. 1992) which defines the word "forge" to mean "A workshop where pig iron is transformed into wrought iron."

In arguing that its mark NEW ENGLAND FORGE is not primarily geographically descriptive, applicant at page 4 of its brief sets forth two primary arguments. First, applicant argues that its goods "are neither made or assembled in New England." Second, applicant argues that its goods "are not solely comprised of forged or wrought components."

In arguing that its goods are not made or assembled in New England, applicant explains that its goods are in fact "imported from overseas." (Applicant's brief page 4). This Board encountered a similar argument in In re Nantucket Allserve Inc., 28 USPQ2d 1144 (TTAB 1993). There the applicant sought to register NANTUCKET NECTARS for soft drinks. Applicant argued that because its soft drinks were not actually manufactured on the island of Nantucket, that therefore NANTUCKET NECTARS was not primarily geographically descriptive of applicant's soft drinks. The Board dismissed applicant's argument noting that while applicant's soft drinks were not manufactured on the island of Nantucket, that nevertheless applicant was headquartered on Nantucket. In this case, the fact that applicant is headquartered in New England (Manchester, Connecticut) is dispositive. Moreover, while applicant may import its wrought iron patio furniture from overseas, applicant has never disputed the fact that its customers then order said furniture from applicant located in New England. Thus, as far as applicant's customers are concerned, the goods (wrought iron patio furniture) do originate from a company (applicant) located in New England.

As for applicant's second primary argument that its wrought iron patio furniture is "not solely comprised of

forged or wrought components," applicant explains at page 5 of its brief that "non-metallic components are included." Applicant's argument suffers from two defects. First, applicant has never argued that its wrought iron patio furniture does not consist almost entirely of wrought iron. The fact that applicant's wrought iron may have a few non-metallic components does not cause applicant's mark NEW ENGLND FORGE to lose its significance as being primarily geographically descriptive. Second, in any event, it must be remembered that in order to be held descriptive, the word FORGE does not have to describe all of the qualities or characteristics of the relevant goods. Rather, it is sufficient that the word "forge" describe one significant quality or characteristic of the relevant goods, in this case, wrought iron patio furniture. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

Finally, in addition to its two primary arguments as to why NEW ENGLAND FORGE is not primarily geographically descriptive of its goods, applicant also argues at pages 5 and 6 of its brief that "the average purchaser would not associate the word 'forge' with furniture." To begin with, we note that applicant's goods are not just any furniture, but rather are wrought iron patio furniture. While the public may not associate the word "forge" with wooden

furniture, this does not mean that they would not associate the word "forge" with wrought iron furniture. In addition, the Examining Attorney during the course of the application process submitted excerpts of articles showing that the word "forge" is used in connection with household furniture and other household items. For example, an article in the August 9, 2003 edition of The Birmingham News (Birmingham, Alabama) discusses "ready-made dining chairs" that are manufactured in a forge.

In sum, based upon the evidence of record, we find that NEW ENGLAND is clearly primarily geographically descriptive of applicant's goods, and that the addition of the word FORGE to NEW ENGLAND does not result in a composite (NEW ENGLAND FORGE) which is not primarily geographically descriptive of wrought iron patio furniture.

Decision: The refusal to register is affirmed.